

## **REMARKS/ARGUMENTS**

Applicants respectfully request reconsideration and allowance of this application in view of the amendments above and the following comments.

Certain claims have been canceled, and claim 29 has been made dependent on claim 28. Thus, all of the dependent claims now being considered are dependent ultimately on claim 28.

Applicants do not believe that any of the amendments introduce new matter. An early notice to that effect is earnestly solicited.

Claims 15-16, 18, 20, 26, 28 and 30 were rejected under 35 USC § 102(b) as being anticipated by Whitbourne et al (US 6,110,483). In response, Applicants respectfully submit that Whitbourne does not anticipate the instant claims.

In responding to Applicants' previous arguments, the Examiner makes the point that they only pertain to claim 28 and the claims dependent thereon. Accordingly, in order to advance the prosecution, Applicants have canceled certain claims and made others depend on claim 28 so that ultimately all claims under consideration depend on claim 28.

Next, the Examiner takes the position that once the active agent is somehow entrapped by the polymer, a suspension is necessarily present. Thus, in Whitbourne's polymer-containing coatings the active will somehow form a suspension. However, the suspensions described by Whitbourne refer to different actives: Whitbourne describes hydrogel coating systems. Bioactive

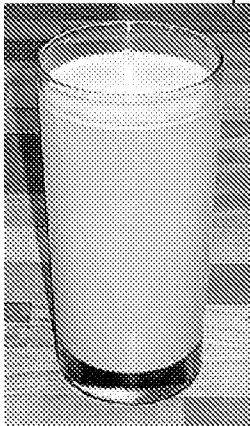
agents such as antibiotics or antimicrobials may be present releasably in the hydrogel system (Col 9, lines 1-5). Insoluble bioactive agents like silver can be dispersed in the coating solution (Col 9). However, gentamicin can according to Whitbourne be made soluble by converting it into the laurylsulfate and can subsequently be simply dissolved in the coating solvent. It follows that no dispersion or suspension is contemplated by Whitbourne when it can be avoided.

So, contrary to the Examiner's assertions, it is not true that Whitbourne describes suspensions of antibiotics in polymers. Furthermore, even if this were true—which Applicants do not concede—the presently required forming of composite is absent in Whitbourne. The Examiner notes that she applies a very ample definition of “suspension.” However, a “suspension,” in chemistry, is the state in which particles of a substance are mixed with a fluid but undissolved (Webster's Unabridged Dictionary, cf Wikipedia<sup>1</sup>).

---

### 1 Suspension (chemistry)

From Wikipedia, the free encyclopedia



Flour suspended in water (appears light blue because blue light is scattered off the flour particles to a greater extent than red light)

In chemistry, a **suspension** is a heterogeneous fluid containing solid particles that are sufficiently large for sedimentation. Usually they must be larger than 1 micrometre.<sup>[1]</sup> The internal phase

In view of the foregoing, Applicants respectfully request that the Examiner reconsider and withdraw this rejection. An early notice that this rejection has been reconsidered and withdrawn is earnestly solicited.

Claims 2, 4-6, 8, 10, 15-20, 26 and 28-30 were rejected under 35 USC § 103(a) as being unpatentable over Whitbourne in view of Watanakunakom et al. (“Watanakunakom”), *J. Antimicrob. Chemother.*, 6: 785-791 (1980), in view of McGhee, US 2001/0051669, in view of Rozzi et al. (“Rozzi”), US 2003/0138492. In response, Applicants respectfully request that the Examiner reconsider and withdraw this rejection as well. This rejection was premised on Whitbourne anticipating the basic aspects of the present invention, which, as shown above, is not, in fact, the case. Nothing in the secondary references overcomes the deficiencies of Whitbourne. Consequently, the combination of Whitbourne, Watanakunakom, McGhee and Rozzi fails to make out a *prima facie* case of the obviousness of the rejected claims.

---

(solid) is dispersed throughout the external phase (fluid) through mechanical agitation, with the use of certain excipients or suspending agents. Unlike colloids, suspensions will eventually settle. An example of a suspension would be sand in water. The suspended particles are visible under a microscope and will settle over time if left undisturbed. This distinguishes a suspension from a colloid in which the suspended particles are smaller and do not settle.<sup>[2]</sup> In a solution, the dissolved substance does not exist as a solid and the two are homogeneously mixed

A suspension of liquid droplets or fine solid particles in a gas is called an aerosol. In the atmosphere these consist of fine dust and soot particles, sea salt, biogenic and volcanogenic sulfates, nitrates, and cloud droplets.

Suspensions are classified on the basis of the dispersed phase and the dispersion medium, where the former is essentially solid while the latter may either be a solid, a liquid or a gas.

Applicants believe that the foregoing constitutes a bona fide response to all outstanding objections and rejections.

Applicants also believe that this application is in condition for immediate allowance. However, should any issue(s) of a minor nature remain, the Examiner is respectfully requested to telephone the undersigned at telephone number (212) 808-0700 so that the issue(s) might be promptly resolved.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS McLAUGHLIN & MARCUS, P.A.

By /Kurt G. Briscoe/

Kurt G. Briscoe

Attorney for Applicant(s)

Reg. No. 33,141

875 Third Avenue - 18<sup>th</sup> Floor

New York, New York 10022

Phone: (212) 808-0700

Fax: (212) 808-0844